

FILED

UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO

FOR THE DISTRICT OF NEW MEXICO

JUN 28 2004

STEVE SANCHEZ,

Plaintiff,

CLERK

v.

Civ. No. 03-0916 WPJ/RLP

ARA HEALTH SERVICES d/b/a
CORRECTIONAL MEDICAL SERVICES
(CMS), *et al.*

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION¹**

1. This is a proceeding brought pursuant to 42 U.S.C. § 1983. Plaintiff alleges various violations of his constitutional rights against several defendants. On October 3, 2003 the district court dismissed several claims against several defendants. See Memorandum Opinion and Order [Doc. 7].

2. The remaining claim alleges denial of adequate treatment for serious medical conditions. The remaining defendants are ARA Health Services d/b/a Correctional Medical Services ("CMS"), Darrell Yerkers, Jimmy Padilla, and Arthur Murphy. As to Defendant Yerkers, who is currently serving in the armed forces, the case was stayed pursuant to the Servicemembers' Civil Relief Act, 50 App. U.S.C. §§ 501-596 (as amended Dec. 19, 2003).

¹ Within ten (10) days after a party is served with a copy of the "Magistrate Judge's Proposed Findings and Recommended Disposition" (the "Proposed Findings") that party may, pursuant to 28 U.S.C. § 636 (b)(1), file written objections in the United States District Court to the Proposed Findings. A party must file any objections within the ten-day period allowed if that party wants to have appellate review of the Proposed Findings. If no objections are filed, no appellate review will be allowed.

21

See Order [Doc. 14]. The remaining three defendants have filed a motion for summary judgment on the ground that Plaintiff has failed to exhaust his administrative remedies.

3. Pursuant to the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a) requires that all available administrative remedies be exhausted before a prisoner brings a § 1983 action. See *Porter v. Nussle*, 534 U.S. 516 (2002); *Booth v. Chumer*, 532 U.S. 731 (2001). Failure to exhaust requires this court to dismiss. Plaintiff has not filed a response to the summary judgment motion.

RECOMMENDED DISPOSITION

The court recommends that the stay be lifted as to Defendant Yerkers, that Defendants' Motion for Summary Judgment [Doc. 16] be granted, and that the case against all Defendants be dismissed. The court also recommends that Defendants' Motion to Compel [Doc. 15] be denied as moot.

A handwritten signature in black ink, appearing to read 'R. Puglisi', written over a horizontal line.

Richard L. Puglisi
United States Magistrate Judge